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| 10/789,342 | 03/01/2004 | Peter M. Ryan | RYAN | 9049 |

7590 03/15/2006
ROBERT A. CAHILL
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EXAMINER

PRONE, JASON D

| | |
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| ART UNIT | PAPER NUMBER |
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3724

DATE MAILED: 03/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/789,342

Applicant(s)

RYAN, PETER M.

Examiner

Jason Prone

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte* Quayle, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 12-14 is/are rejected.
- 7) ☒ Claim(s) 10, 15 and 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 December 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-348)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

Replacement Drawing Sheets

Drawing changes must be made by presenting replacement sheets which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments section, or remarks, section of the amendment paper. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). A replacement sheet must include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and within the top margin.

It is noted that the amended drawing do not have the proper label as noted by the underlined portion above. The drawing must be re-submitted with "Replacement Sheet" or "New Sheet" label.

Claim Objections

1. Claims 1 and 12 objected to because of the following informalities: In regards to claims 1 and 12, the newly added phrase "to prevent the common sharp edge from cutting deeply into human flesh" is not accurate. For example, if the strongest person in the world was to swing the saber as hard as they could at a frail person's arm. The concavities would not stop the blade from traveling all the way through the frail arm thereby making the above statement not accurate. Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-6 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnard (2,566,112) in view of Holler (2004/0093742).

Claims 1-6:

In regards to claim 1, Barnard discloses the invention including a blade of generally triangular cross section (10, the shape in Figure 3 of the instant application defines the term "generally triangular". The shape in Figure 2 of Barnard is as triangular as Figure 3 of the instant application) having first and second concave sides (24) converging from respective first edges (22) to a common sharp edge (16) and a third side joining the first edges of the first and second sides and providing a heel for the blade (32), the first and second concave sides having deep concavities capable of preventing the sharp edge from cutting deeply into human flesh (24, the term deep is a relative term. For example, the concave sides 24 are deeper than concave side 20. The concave sides 24 are capable upon swinging insertion of creating a suction that could stop forward progress of the blade), and a hilt including a handle fixed to a first end of the blade (12).

In regards to claim 4, Barnard discloses the blade is tapered along its length to a blunted second end (Fig. 1 clearly shows the top edge, starting at reference numeral "10", tapering from the handle and then ends to a blunt edge (right end of Fig. 1)).

In regards to claim 6, Barnard discloses the third side of the blade is convex (32).

However, Barnard fails to disclose a saber, a guard fixed to a first end of the blade, a second free end of the blade is pointed, blade is tapered along the length to an acute second end, and the blade is tapered along its length to a knife edge configuration.

Holler teaches a cutting tool structure that can either be a knife or a sword/saber ([0010]), a guard fixed to a first end of the blade (60), a second free end of the blade is pointed (46), blade is tapered along the length to an acute second end (follow the length from 42 to 46), and the blade is tapered along its length to a knife edge configuration (44). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Barnard with a saber structure, a pointed end/knife configured end, and a guard, as taught by Holler, to allow for longer cutting tool with a sharper end having a guard to protect the user.

Claim 12:

In regards to claim 12, Barnard discloses the invention including an elongate blade of generally triangular cross section (10) having first and second concave sides (24) converging from respective first edges (22) to a common sharp edge (16) and a third convex side joining the first edges of the first and second sides (32), the first and second concave sides having short radii of curvatures capable of preventing the sharp

edge form cutting deeply into human flesh (24) and a hilt fixed to a second end including a handle (12).

However, Barnard fails to disclose a saber, the first, second, and third sides being tapered along their lengths to a pointed first end of the blade, and a guard fixed to a first end of the blade.

Holler teaches a cutting tool structure that can either be a knife or a sword/saber ([0010]), the first, second, and third sides being tapered along their lengths to a pointed first end of the blade (follow 42 to 46), and a guard fixed to a first end of the blade (60). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Barnard with a saber structure, a tapered to a pointed end configuration, and a guard, as taught by Holler, to allow for longer cutting tool with a sharper end having a guard to protect the user.

4. Claims 7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnard in view of Holler as applied to claims 1 and 12 above, and further in view of Guerra (Des. 114,396). Barnard and Holler disclose the invention including a handle with a long diameter bisecting an angle defined by the respective first edges of the first and second sides and the common sharp edge (12 in Barnard).

However, Barnard and Holler fail to disclose the handle has an oval-shaped cross section.

Guerra teaches a handle with an oval-shaped cross section (Fig. 3). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention,

to have provided Barnard in view of Holler with a handle with a oval cross section, as taught by Guerra, to allow for more comfortable grip.

5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barnard in view of Holler as applied to claim 1 above, and further in view of The Bud K Catalog. Barnard and Holler disclose the invention including that the length of the blade is greater than 12 inches (paragraph [0010] of Holler).

However, Barnard and Holler fail to disclose the specific blade length of at least 20 inches.

The Bud K Catalog discloses that it is old and well known for sword/saber blades to be at least 20 inches (Line 2 of Cobra Twin description (27 1/4")). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Barnard in view of Holler with a blade with a length of at least 20 inches, as taught by The Bud K Catalog, to allow for a blade to be of a specific size.

6. Claims 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnard in view of Holler further in view of Guerra as applied to claims 1 and 7 above, and further in view of The Bud K Catalog. Barnard, Holler, and Guerra disclose the invention including, in regards to claim 11, adjacent the hilt a distance between the common sharp edge and a mid point of the third side is on the order if 1.5 inches (W in Holler) and that the length of the blade is greater than 12 inches (paragraph [0010] of Holler).

However, Barnard, Holler, and Guerra fail to disclose a specific blade length that ranges from 24 to 48 inches.

The Bud K Catalog discloses that it is old and well known for the length of a sword/saber blade to range from 24 to 48 inches (Line 2 of Cobra Twin description (27 ¼")). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Barnard in view of Holler further in view of Guerra, with a blade with a length ranging between 24 and 48 inches, as taught by The Bud K Catalog, to allow for a blade to be of a specific size.

7. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barnard in view of Holler further in view of Guerra as applied to claims 12 and 13 above, and further in view of The Bud K Catalog. Barnard, Holler, and Guerra disclose the invention including that the length of the blade is greater than 12 inches (paragraph [0010] of Holler).

However, Barnard, Holler, and Guerra fail to disclose a specific blade length that ranges from 24 to 48 inches.

The Bud K Catalog discloses that it is old and well known for the length of a sword/saber blade to range from 24 to 48 inches (Line 2 of Cobra Twin description (27 ¼")). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Barnard in view of Holler further in view of Guerra, with a blade with a length ranging between 24 and 48 inches, as taught by The Bud K Catalog, to allow for a blade to be of a specific size.

Allowable Subject Matter

8. Claims 10, 15, and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

9. Applicant's arguments filed 23 December 2005 have been fully considered but they are not persuasive. Upon further review, it has been determined that the amendments to the claims do not overcome the rejection. In regards to claim 1, the term "deep" is a relative term. For example, if the concave sides were compared to a tool featuring deeper concave sides, the concave sides of the instant application would be considered to be shallow when compared to the other tool. The parameters of the term "deep" are not disclosed. Another comparison is Figure 2 of Barnard has concave sides 24 which may be shallower than the concave side of the instant application but are clearly deeper than the concave sides of Figure 3 (20). So the concave sides 24 of Barnard are in fact deep when the parameter of what is meant by the term "deep" are lacking from the claim. Meaning additional structure is needed to differentiate the depth of the sides of the instant application to the sides of Barnard. In regards to claim 12, the same goes for the relative term "short". Figure 2 of Barnard has concave sides 24 which may a larger radii of curvature than the concave side of the instant application but are clearly shorter than the concave sides of Figure 3 (20).

Conclusion

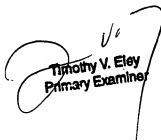
10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Anderson, Zalkind, Brown, Gelinas, Jr., and Begon.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Prone whose telephone number is 571-272-4513. The examiner can normally be reached on 7:30-5:00, Mon - (every other) Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 571-272-4514. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JP

March 13, 2006


Timothy V. Eley
Primary Examiner